

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: RUTAKANGWA, J.A., MBAROUK, J.A., And ORIYO, J.A.)

CRIMINAL APPEAL NO. 130 OF 2010

JOHN PETRO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Mbeya)**

(Msuya, J.)

dated the 22nd day of June, 2009

in

(Misc) Criminal Application No. 9 OF 2008

RULING OF THE COURT

27th June, & 4th July, 2011

RUTAKANGWA, J.A.:

The appellant was convicted by the District Court of Mbeya at Mbeya of the offence of Defilement. He was sentenced to thirty years imprisonment, six strokes of the cane and was ordered to pay Tshs. 300,000/= as compensation. As he was aggrieved by the conviction and sentences, he intended to appeal to the High Court. He had 10 clear days under S. 361 (1) of the Criminal Procedure Act Cap. 20 (the Act) within which to give his notice of intention to appeal. He failed to give the said notice within the prescribed period. He accordingly applied for extension of time to the High Court.

The application for extension of time was dismissed by the High Court (Msuya J.) on 22nd June, 2009. The appellant was dissatisfied with the dismissal order. He resolved to appeal to this Court. On 2nd July, 2009 he purported to lodge a notice of appeal, which is found on page 38 of the record of appeal. This notice shows that the appellant was appealing against the decision of the High Court (Msuya, J.) sitting at Mbeya in "Criminal Application/Appeal No. 09 of 2008" in which he was convicted of defilement c/s 136 of the Penal Code "and sentenced to thirty years imprisonment." This notice of appeal instituted the present appeal.

When the appeal was called on for hearing, Mr. Prosper Rwegerera, learned State Attorney for the respondent Republic, rose to argue a point of preliminary objection notice of which he had earlier lodged. Mr. Rwegerera pressed us to strike out this purported appeal as it was instituted by an incurably defective notice of appeal. It was his contention that the decision, the subject of the notice of appeal does not exist at all. Msuya, J., he argued, dismissed the appellant's application for extension of time. If the appellant was aggrieved by that decision, the lodged notice of appeal ought to have specifically shown so and that this was a mandatory

requirement of Rule 61 (2) of the then Tanzania Court of Appeal Rules, 1979 (the Rules), he stressed.

The appellant, though a lay person, quickly conceded the defect. He, therefore, prayed that the record be sent back to the High Court to enable him make a fresh application for extension of time.

On our part, we have had no difficulty, in appreciating the force of Mr. Rwegerera's argument. It is now settled law that under the said Rule 61 (2) it was a mandatory requirement for the notice of appeal to state the nature of the conviction, sentence, order, or finding of the High Court against which it was desired to appeal. Failure to do so rendered, and still renders under the 2009 Court Rules, the purported appeal incompetent. Among the many decided cases by the Court which have firmly cemented this principle of law, we shall only refer to **MAJID GOA VEDASTUS V.R.**, Criminal Appeal No. 268 of 2006, **WILLIAM SUNDAY V.R.**, Criminal Appeal No. 75 of 2007, **GABRIEL MWAKANEMELA V.R.**, Criminal Appeal No. 178 of 2009 and **EMMANUEL A. KANENGO V.R.**, Criminal Appeal No. 432 of 2007 (all unreported). In all these cases, and others, the Court has consistently held that a notice of appeal of the kind which instituted this appeal is invalid and incapable of instituting a competent appeal in this

Court. Appeals instituted by such invalid notices of appeal, have all along been struck out. It is for this reason, that we have found ourselves unable to overrule the preliminary objection and resist Mr. Rwegerera's prayer.

All said and done, we rule that this purported appeal is incompetent on account of being instituted by an invalid notice of appeal. We accordingly strike it out. The appellant is at liberty to lodge a fresh notice of appeal subject to the law on limitation.

It is so ordered.


DATED at **MBEYA** this 30th day of June, 2011.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL